

The temporary storage exemption provides that no use tax applies to the temporary storage, in this State, of tangible personal property which is acquired outside this State and which, subsequent to being brought into this State and stored here temporarily, is used solely outside this State. See 86 Ill. Adm. Code 150.310. (This is a GIL.)

January 4, 1999

Dear Ms. Xxxxx:

This letter is in response to your letter dated September 11, 1998. The nature of your letter and the information you have provided require that we respond with a General Information Letter which is designed to provide general information, is not a statement of Department policy and is not binding on the Department. See 86 Ill. Adm. Code 1200.120(b) and (c), enclosed.

In your letter, you have stated and made inquiry as follows:

Pursuant to 2 Ill. Adm. Code 1200, we request the Department of Revenue (Department) confirm our understanding of the Illinois use tax obligations of our client, hereinafter referred to as the COMPANY. To the best of our knowledge, the issues involved in this general information letter request are not subject to an existing audit, protest or appeal, or litigation concerning this taxpayer. The Department has not ruled on a similar issue in regard to this taxpayer or a predecessor, nor has a similar ruling been requested for this taxpayer.

Facts

The COMPANY is a multi-state business headquartered outside Illinois. The COMPANY does business within Illinois and maintains a storage facility in the state. During the period August 1996 through March 1998, the COMPANY purchased tangible personal property which was delivered to its Illinois storage facility. The items were delivered to the Illinois facility from its vendors' warehouses located outside of Illinois.

Certain of the tangible personal property was held in Illinois for storage purposes only and was later put to use solely outside of Illinois. The equipment was primarily put to use (installed) at the COMPANY's business locations in Indiana and Ohio. The Illinois use tax was paid in error to the COMPANY's vendors on the sales price of the equipment which was put to use solely outside Illinois. The COMPANY's vendors remitted this tax to the Department.

Conclusion

The COMPANY is entitled to a refund of Illinois use tax paid in error on the purchase of tangible personal property that was delivered to and accepted at its Illinois storage facility and was later put to use solely outside the state. The COMPANY may request a refund of taxes paid in error from its vendors and its vendors may submit a claim for refund with the Department in accordance with Sections 6, 6a, 6b and 6c of the Retailers' Occupation (Sales) Tax Act.

Discussion

The COMPANY purchased large quantities of tangible personal property for use in its multi-state business operations and accepted delivery of the equipment at its regional storage facility located in Illinois. The equipment was installed at business sites located both inside and outside of the State of Illinois.

Illinois Compiled Statutes 35 ILCS 105/3 imposes a use tax as follows:

A tax is imposed upon the privilege of using in this State tangible personal property purchased at retail from a retailer...

'Use' is defined by 35 ILCS 105/2 as follows:

...the exercise by any person of any right or power over tangible personal property incident to the ownership of that property, except that it does not include the sale of such property in any form as tangible personal property in the regular course of business to the extent that such property **is not first subjected to a use for which it was purchased** ...[emphasis added].

Further, 35 ILCS 105/3-55 provides:

To prevent actual or likely multistate taxation, the tax imposed by this Act does not apply to the use of tangible personal property in this State under the following circumstances:

(e) The temporary storage, in this State of tangible personal property that is acquired outside this State and that, after being brought into this State and stored here temporarily, is used solely outside this State...

Therefore, because the COMPANY purchased certain equipment outside Illinois, stored the equipment in Illinois on a temporary basis and then transferred the equipment to its business locations in Indiana and Ohio, we conclude that the COMPANY paid Illinois use tax in error

on the purchase of that equipment and is entitled to a refund from its vendors.

Our conclusion is supported by the decision in *Nutrition Headquarters, Inc. v. Department of Revenue*, Illinois Appellate Court, Fifth District, No. 5-83-0377, filed May 4, 1984, 463 N.E.2d 926, 123 IllApp3d 997, 463 NE2d 926, released June 12, 1984. In fact, while the taxpayer in *Nutrition Headquarters* performed some processing (applied address labels, sorted and mailed) on the tangible personal property for which it appropriately claimed the temporary storage exemption, the COMPANY performs no such processing in Illinois. The COMPANY's in-state activities as it relates to the equipment are limited to accepting, inspecting, and storing the equipment and shipping the equipment to the COMPANY's locations in Indiana and Ohio. Further support of our conclusion is provided by the decision in Illinois Private Letter Ruling ST 96-0233 (June 5, 1996) where a taxpayer who accepted delivery of equipment in Illinois from outside the State was entitled to the temporary storage exemption even though it inventoried, labeled, bar coded and designated the eventual shipment location of the equipment while at its Illinois warehouse.

35 ILCS 105/4 states the following:

Evidence that tangible personal property was sold by any person for delivery to a person residing or engaged in business in this State shall be prima facie evidence that such tangible personal property was sold for use in this State.

Thus it is assumed that equipment delivered to the COMPANY in Illinois is intended for use in Illinois unless such assumption is rebutted. The COMPANY's extensive fixed asset records designate the physical location of each item of the COMPANY's equipment and serve to rebut that prima facie evidence.

We request that the Department confirm our interpretation of the law as explained above. Upon receipt of the Department's confirmation, the COMPANY will submit a use tax refund request to its vendors.

* * * * *

In the event that this letter does not provide sufficient information to support our conclusions, we request a verbal hearing to more fully state our position with respect to the foregoing.

Please send all correspondence on this matter to the attention of:

NAME/ADDRESS

If you require additional information or would like to discuss this request further, please call me at ####. Thank you for your consideration.

For your information, we have enclosed a copy of 86 Ill. Adm. Code 150.310 concerning Exemptions to Avoid Multi-State Taxation. Section 150.310(a)(4) provides that no tax applies to "the temporary storage, in this state, of tangible personal property which is acquired outside this State and which, subsequent to being brought into this State and stored here temporarily, is used solely outside this State...."

In order to document this exemption, purchasers of such tangible personal property should give certificates to their vendors stating that the tangible personal property is acquired outside Illinois and brought into Illinois only temporarily, and that subsequent to such temporary storage in Illinois, the tangible personal property will be shipped out of Illinois, and will be used solely outside the State of Illinois.

Please note that if tangible personal property is acquired in Illinois and is stored in Illinois before being used solely outside Illinois, then the items will be subject to Illinois Use Tax on the cost price of the items. Please also note that if purchase orders for tangible personal property are accepted in Illinois, the tangible personal property is not acquired outside Illinois, even if it is delivered in Illinois from the vendors' warehouse outside Illinois.

Section 19 of the Use Tax Act, 35 ILCS 105/19, provides for claims for credit when it appears that an amount of tax or penalty or interest has been paid in error to the Department. For your information, we have enclosed a copy of 86 Ill. Adm. Code 150.1401, which are the Department's regulations for these situations.

Section 150.1401(b)(1) provides for situations in which tax has been paid in error to the Department by a retailer who is required or authorized to collect and remit the Use Tax. These provisions would apply to purchases of tangible personal property acquired outside the State.

Section 150.1401(b)(2) provides for situations in which tax has been paid in error by the purchaser to a retailer, who retained such tax as reimbursement for his tax liability on the same sale under the Retailers' Occupation Tax Act, and who remitted the amount involved to the Department under the Retailers' Occupation Tax Act. In Section 150.1401(b)(2) situations, the procedure for recovering the tax is prescribed in Sections 6, 6a, 6b and 6c of the Retailers' Occupation Tax Act. For your information, we have enclosed a copy of 86 Ill. Adm. Code 130.1501, which are the Department's regulations for claims for credit under the Retailers' Occupation Tax Act. These provisions would not apply to situations where tangible personal property is acquired outside the State.

I hope this information is helpful. If you have further questions related to the Illinois sales tax laws, please contact the Department's Taxpayer Information Division at (217) 782-3336.

ST 99-0008-GIL

If you are not under audit and you wish to obtain a binding Private Letter Ruling regarding your factual situation, please submit all of the information set out in items 1 through 8 of the enclosed copy of Section 1200.110(b).

Very truly yours,

Martha P. Mote
Associate Counsel

MPM:msk
Encl.